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Mr Michael Green
Project Officer
Australian Competition & Consumer Commission
PO Box 1199
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Dear Mr Green

**Dairy Vale Foods Limited, trading as "Dairy Farmers"
Exclusive dealing notifications**

I refer to the Australian Competition & Consumer Commission's ("ACCC") letter of 6 September 2004 to our client concerning the exclusive dealings notifications by Dairy Vale Co-operative Limited (the "Co-operative").

This letter only deals with the notifications lodged by the Co-operative in November 1992 and February 1993.

Background

The Co-operative lodged exclusive dealing notifications in November 1992 and February 1993 in relation to an exclusive dealing agreement between the Co-operative and 23 milk vendors in the south east of South Australia and with 6 milk vendors in the Riverland region of South Australia.

The term of the agreement was 18 months and has since expired. The Co-operative and milk vendors are no longer operating under the terms of this agreement.

Dairy Vale Foods Limited

The Co-operative converted to a company called Dairy Vale Foods Limited ("Dairy Vale") pursuant to section 60(2) of the *Co-operatives Act* 1983 (SA) pursuant to a special resolution of members on 29 November 1994.

Dairy Vale became part of the Dairy Farmers Group with Australian Co-operative Foods Limited as the parent entity in 1998.

Notification

The arrangements which were dealt with in the notifications were not entered into with the purpose of substantially lessening competition and in Dairy Vale's opinion did not result in any substantially lessening of competition in South Australia.

Franchise System

As set out in Dairy Vale's submission dated 9 November 2004 in respect of the Milk Vendors Association (SA) Inc's application for authorisation (No. A90927), the Dairy Farmers Group has in place a Franchise System for the distribution of its products to residential and trade customers in New South Wales, Queensland and South Australia.

The Franchise System grants Franchise Owners the exclusive right to deliver Dairy Farmers Products to residential and trade customers subject to the terms and conditions set out in the Franchise Agreements.

Dairy Vale does not rely on the notifications in respect of its current franchise arrangements in South Australia. The Franchise Agreements do not have the purpose, or the effect or likely effect of substantially lessening competition.

As set out in Dairy Vale's submission dated 9 November 2004 there are a number of suppliers of milk and dairy products or products which compete with milk and dairy products in South Australia. These include:

- (a) processors, including Dairy Farmers, National Foods Limited ("National Foods"), Parmalat Australia Limited ("Parmalat"), Warrnambool Cheese and Butter Factory Company Limited, Peters & Brown Limited, A2 milk and various other smaller processors such as Tweed Vale;
- (b) foodservice distributors;
- (c) beverage companies (soft drink; juice and water companies); and
- (d) supermarkets.

As such, substantial and effective competition exists in South Australia and in Dairy Vale's opinion is not lessened by Dairy Vale's Franchise Agreements.

Exemptions for other products

As the Franchise System is based upon the sale and delivery of Dairy Farmers Products to Designated Customers Franchise Owners are required to promote Dairy Farmers Products. Franchise Owners are permitted to sell products which are not available from Dairy Farmers provided an exemption request has been applied for and granted.

The majority of Franchise Owners would sell only Dairy Farmers Products but would have exemptions from time to time depending on customer demands.

Supermarkets

As set out in Dairy Vale's submission dated 9 November 2004, contractors are used to deliver products on behalf of the Dairy Farmers Group to supermarkets.

There are no restraints under Dairy Vale's supermarket delivery arrangements which restrain contractors from delivering other products provided such arrangements do not negatively affect the contractors' ability to carry out their obligations to Dairy Vale.

Dairy Vale does not rely on the notifications in respect of its current supermarket arrangements in South Australia. They do not have the purpose, or the effect or likely effect of substantially lessening competition.

Market shares

Dairy Vale's branded products have the following market shares in South Australia (approximately):

White milk	18%
Flavoured milk	7%
Dairy products	21%

In summary, Dairy Vale does not rely on the notifications in respect of its current franchise and supermarket delivery arrangements in South Australia.

Please contact the writer if you have any questions.

Yours sincerely



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